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Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

PHILIP ANTHONY JEDLICKA,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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January 27 , 1988

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QUESTIONS PRESENTED

1. Whether the Tax Court correctly refused to allow a pro se litigant to offer proof of deductible expenses where those expenses were specifically enumerated in his petition?

2. Whether the Tax Court properly denied a pro se litigant leave to amend his petition where he had no knowledge of the technical defect until the day of trial?

LIST OF PARTIES

The parties to the proceedings below were the petitioner, Philip Anthony Jedlicka and the respondent, the Commissioner of Internal Revenue.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner Philip Anthony Jedlicka respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit, entered in the above-entitled proceeding on October 30, 1987.

OPINIONS BELOW

The opinion of the Court of Appeals for the Tenth Circuit is reprinted in the appendix hereto, p.15, infra.

JURISDICTION

Invoking federal jurisdiction under Section 6213 of the Internal Revenue Code of 1954 (26 U.S.C.), the petitioner brought this suit in the United States Tax Court. On December 9, 1985, the Tax Court ruled that Philip Jedlicka's attempt to introduce evidence constituted a Motion to Amend his petition, and that such motion would be denied. The Tax Court did not render a written opinion.

On petitioner's appeal, the Tenth Circuit on October 30, 1987, entered a judgment and an opinion affirming the Tax Court's order pursuant to Section 7482 of the Internal Revenue Code of 1954 (26 U.S.C.) See p. 15, infra. No petition for

rehearing was sought.

The jurisdiction of this Court to review the judgment of the Tenth Circuit is invoked under 28 U.S.C. Sec. 1254(1).

STATEMENT OF THE CASE

By statutory notice of deficiency dated January 3, 1983, the Commissioner of Internal Revenue assessed deficiencies and additions to tax against the petitioner, Philip Anthony Jedlicka, for his 1978 through 1981 tax years.

On April 6, 1983, Philip Jedlicka filed a petition with the United States Tax Court seeking a redetermination of the deficiencies and additions to tax asserted by the Commissioner. Petitioner appeared pro-se and was not at any point represented by counsel during the Tax Court proceedings.

Petitioner had no legal training or knowledge of Tax Court procedure.

In his Tax Court petition, petitioner contested the entire amount of the deficiencies and additions to tax, claiming that the Commissioner failed to allow numerous deductions to which he was entitled. (Doc. 2) Thus in his Tax Court petition, Philip Jedlicka stated:

> "I disagree with the entire tax computation in view of the facts, No utility costs were included, no interest payments, no mortgage payments, no insurrance payments, no real estate payments, Rental income computed falsely and inflated, no loss of property, no damage, depreciation of contents not included, depreciation of structure not included at the correct rate, cost of repairs not included, cost of upkeep not included, cost of advertisements not included, cost of repairs for past damages not included, loss of income due to damages, failure of tenants to pay rent not included and numerous other standard cost. Omitted from my tax were all the other costs and interest payments including legal fees, loans and depreciation of my property."

When the case was initially called for trial on February 4, 1985, petitioner obtained a continuance on the grounds that he was unprepared for trial. (Doc. 11)

While the case was pending in Tax Court, the petitioner was communicating with both the Appeals and District Counsel Divisions of the Internal Revenue Service. (III-Tr. 13) During one such conference with an Appeals Officer, petitioner was instructed to prepare federal income tax returns for the years in question and submit them to the Internal Revenue Service. (III-Tr. 29) Petitioner had not previously filed income tax returns for the years in question.

On December 6, 1985, the petitioner met with representatives of both the Appeals and District Counsel Divisions of

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1/ "Doc." references are to the documents comprising the original record on appeal as numbered by the Clerk of the Tax Court. "I-Tr.", "II-Tr.", and "III-Tr." references are to the separately certified transcripts of proceedings held before the Tax Court on February 4, 1985 (I), and on December 9, 1985 (II and III), respectively.

the Internal Revenue Service. With him, he brought the federal income tax returns for the 1978 through 1981 tax years as requested by the Appeals Officer. Petitioner also brought all supporting documents for those income tax returns. On those tax returns, petitioner claimed deductions for rental expenses, home office expenses, business expenses, and education expenses.

On December 9, 1985, the Tax Court called the trial in the instant case. At that time, petitioner indicated that he intended to offer proof of deductible rental, home office, business and education expenses. The Commissioner objected to the presentation of evidence of all expenses except rental expenses on the grounds that petitioner was attempting to raise new issues, and that to permit the petitioner to introduce such evidence

would result in surprise and undue prejudice. (III-Tr. 2) The Tax Court construed petitioner's attempt to offer proof of deductible home office, business and educational expenses as a motion to amend his petition. From the bench, the court denied petitioner leave to amend his petition, holding that to permit petitioner to present such evidence was prejudicial to the Government's case. (III-Tr. 43.) The Tax Court did not render a written opinion.

Thereafter, the parties settled their dispute with respect to the petitioner's rental income and expenses, and stipulated to the Tax Court's decision. The parties further stipulated that the entry of the decision did not waive petitioner's right to appeal the denial of his motion for leave to amend. (Doc. 13.)

On October 30, 1987, the United States Court of Appeals for the Tenth

Circuit issued its order and judgment affirming the Tax Court's decision.

REASON FOR GRANTING THE WRIT

The Tenth Circuit's requirement that pleadings of pro-se litigants strictly comply with the technical rules of Tax Court procedure conflicts with decisions of this Court and other Circuits.

In direct contravention with the rulings of this Court and with the Second and Ninth Circuits, the Tenth Circuit has ruled that the Tax Court may strictly and narrowly construe pleadings of pro-se litigants such as the petitioner. Such a drastic interpretation deserves this Court's attention.

Tax Court Rule 34(b)(1)(4) provides that the petition in a deficiency action shall contain:

> "clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability...Any issue not raised in the assignment of errors shall be deemed to be conceded."

Tax Ct. R. 34, 16 U.S.C. App. R. 34(1982). The Tax Court refused to allow a liberal construction of Philip Jedlicka's petition and concluded that the business loss, home office and education expense issues were not properly raised in the petition and refused to consider them. The court denied petitioner's request to offer proof of business and home office deductions such as interest, insurance, repairs and utilities even though those expenses were specifically enumerated in his petition.

The Tenth Circuit's finding that pleadings of pro-se litigants do not require a liberal interpretation is in direct conflict with this Court's ruling in Hughes v. Rowe, 449 U.S. 5, 9(1980),

and in Haines v. Kerner, 404 U.S. 519, 520 (1972). In Hughes, supra, this Court directed federal trial courts to read pro se papers liberally. In Haines, supra, a pro se prisoner's complaint was held to "less stringent standards than formal pleadings drafted by lawyers" 404 U.S. at 520.

The conflict between Haines and the instant case could not be more complete. While Haines was a criminal case involving a pro se prisoner's complaint in District Court, in contrast with the civil nature of these Tax Court proceedings, those differences do not appear significant on the issue of standards for interpreting pleadings filed by pro se litigants.

Equally in conflict with the decision below is Christensen v. Commissioner, 786 F.2d 1382 (9th Cir. 1986). There the Ninth Circuit presented a historical analysis of decisions regarding the policy

of allowing a liberal reading of pro se pleadings in Tax Court. In Christensen, the Court held that papers filed by a pro se litigant entitled "Motion to Place the Following Statements in the Record" should have been treated as a motion to amend. The Court added, in words peculiarly relevant to the instant case:

> "The policy allowing liberal reading of pro se pleadings is particularly appropriate in tax cases. Taxpayers, unassisted by trained attorneys, are likely to have difficulty understanding the intricacies of tax litigation and procedure. Without legal counsel, they are pitted against the expertise of the Internal Revenue Service in the Tax Court. Tax disputes that involve relatively minor sums may be of great significance to less wealthy taxpayers. Such taxpayers` access to Tax Court review should not be barred by legal technicalities. Indeed, Rule 41 itself speaks in terms of 'when justice so requires,' not in terms of legal technicality."

If the petition which Philip Jedlicka filed in U.S. Tax Court had been given a liberal interpretation, he would have at the very least been allowed to offer

evidence of those home office and business expenses which were specifically enumerated in his petition such as: depreciation, insurance, utilities, real estate taxes, advertising, legal expense and interest. However, because of his lack of legal talent and his inability to understand the technical rules of Tax Court procedure he was denied the right to present such evidence. Nor was he given and opportunity to correct the technical defect in his petition.

Tax Court Rule 41(a) permits a party to amend its pleadings, either as a matter of course before a responsive pleading is served, by leave of the court, or by consent of the adverse party. Tax Ct. R. 41(a), 26 U.S.C. App. R. 41(a) (1982). The rule notes that "leave shall be given freely when justice so requires." Id.

In Holmes v. Goldin, 615 F.2d 83, 85

(2d Cir.1980) the Second Circuit directed trial courts to allow amendment of pro se complaints "fairly freely." In this case, petitioner was given no opportunity to amend his petition.

The effect of the Tenth Circuit's ruling in the instant case is to completely disregard the pro se status of Tax Court litigants. It appears that the Tenth Circuit has carved out a special exception to the ruling in Haines for pro se litigants appearing in Tax Court.

The decision of the Tenth Circuit below also appears contrary to the statutory right of self representation. 28 U.S.C. Sec. 1654 (1982) provides that in all courts of the United States the parties may represent themselves. However, as the court stated in Traguth v. Zuch, 710 F.2d 90, 95 (2d Cir. 1983),

> "Implicit in the right of self-representation is an obligation on the part of the court to make reasonable

> allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training."

In the proceedings below, the Tax Court found that Philip Jedlicka's attempt to amend his petition was untimely. However, he had never been put on notice that his petition was defective prior to trial. Petitioner's right to self representation was denied because the Tax Court refused to grant him an opportunity to correct his defective petition.

The Tenth Circuit has thus created a confusing precedent which disregards a litigant's pro se status while in Tax Court. It is a precedent directly at odds with this Court's ruling in Haines. Plenary consideration of the matter by this Court is essential.

CONCLUSION

For the reasons stated, this petition for certiorari should be granted.

Respectfully submitted,

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January 2 , 1988

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PHILIP ANTHONY JEDLICKA,	FILED OCT 30, 1987
Petitioner-Appellant,	
v.	No. 86-1567 T.C.No.7633-83
COMMISSIONER OF INTERNAL REVENUE,	
Respondent-Appellee.	

ORDER AND JUDGMENT

Before McKAY and BALDOCK, Circuit Judges, and GREENE, District Judge.*

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*Honoraable J. Thomas Greene, District Judge, United States District Court for the District of Utah, sitting by designation.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral

argument would not be of material assistance in the determination of the instant petition. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.8(c) and 27.1.2. The cause is therefore ordered submitted without oral argument.

This matter is before the court on petition for review of an order of the United States Tax Court denying petitioner's motion for leave to amend his petition for redetermination.

As recognized by the Tax Court, it would have been impermissible to allow petitioner to present evidence relating to matters not raised in the petition for redetermination. T.C.R. 34(b)(4); see Granzow v. Commissioner, 739 F.2d 265, 269 (7th Cir. 1984); LiButti v. Commissioner, 50 T.C.M. (CCH) 241, 256-57 (1985). Consequently, the Tax Court properly construed petitioner's attempt to

introduce new issues into the proceeding as a motion for leave to amend the original petition pursuant to T.C.R. 41(a). The decision to grant or deny such a motion lies within the discretion of the Tax Court, LiButti, 50 T.C.M. (CCH) at 257; see Braude v. Commissioner, 808 F.2d 1037, 1038-39 (4th Cir. 1986); Long v. Commissioner, 757 F.2d 957, 959 (8th Cir. 1985), which we believe was properly exercised in this case. See generally Granzow, 739 F.2d at 269; LiButti, 50 T.C.M. (CCH) at 257.

The judgment of the United States Tax Court is AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIUM

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October Term, 1987

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Respondent

CERTIFICATE OF SERVICE

I, Timothy A. Stiger, hereby certify that on this 27th day of January, 1988, three copies of the Petiton for Writ of Certiorari in the above entitled case were mailed, first class postage prepaid, to:

The Solicitor General, Department of Justice, Washington, D.C. 20530, counsel for the respondent herein. I further certify that all parties required to be served have been served.

Timothy A. Stiger

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Supreme Court, U.S.
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No. 87-1292

In the Supreme Court of the United States

OCTOBER TERM, 1987

PHILIP ANTHONY JEDLICKA, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Tax Court abused its discretion in refusing to consider issues that were not raised in a taxpayer's pro se petition, but instead were raised for the first time three days before trial.

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OCTOBER TERM, 1987

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COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 15-17) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 30, 1987. The petition for a writ of certiorari was filed on January 27, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. During 1978 through 1981, petitioner received both wages from the United States Postal Service and also some rental income. He did not, however, file federal income tax returns for those years. The Commissioner determined deficiencies and additions to tax against him.[1] Petitioner

[1] The additions to tax were for failure to file a return (26 U.S.C. 6651(a)(1)), negligence or intentional disregard of the rules or regula-

filed a petition in the United States Tax Court on April 6, 1983. Petitioner did not dispute that he received the wages and other income. But he contended that the Commissioner had failed to allow unspecified amounts of various deductions incurred in connection with the rental income that he received, and that the Commissioner had incorrectly determined the amount of that rental income (Doc. 2, at 1-2; see Pet. 3).[2]

When the case was first called for trial on February 4, 1985, petitioner obtained a continuance on the ground that he was unprepared, although he was reprimanded by the court for failing to prepare for trial and instead seeking a continuance on its eve (Doc. 11; I-Tr. 2-10). The trial was rescheduled for Monday, December 9, 1985. On Friday, December 6, 1985, petitioner presented the Commissioner with completed tax returns for the years at issue together with what he represented to be numerous supporting documents. On those returns, petitioner for the first time claimed deductions for education expenses, business losses, and home office expenses (II-Tr. 2-5; III-Tr. 2-4, 39-40).

When the trial commenced, on December 9, 1985, petitioner indicated that he intended to establish that he was entitled to the education, business loss, and home office deductions claimed for the first time on December 6, 1985. The Tax Court construed petitioner's attempt to assert the additional deductions as a motion to amend his petition,

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tions (26 U.S.C. 6653(a)), and underpayment of the estimated tax (26 U.S.C. 6654).

[2] "Doc." references are to the documents comprising the original record on appeal as numbered by the Clerk of the Tax Court. "I-Tr.," "II-Tr.," and "III-Tr." references are to the separately certified transcripts of proceedings held before the Tax Court on February 4, 1985 (I), and on December 9, 1985 (II and III), respectively.

and it denied leave to amend the petition. The court stated that "justice requires that the motion to amend the petition be denied" (III-Tr. 43). The court explained that "it is highly prejudicial to the Government's case for you to file your returns on the eve of trial, claim substantial losses, and expect the other side to conduct an audit of your return so close to trial" (*ibid.*). Thereafter, the parties settled their dispute with respect to the rental income and related expenses, and stipulated to the Tax Court's decision (Doc. 13).

2. The court of appeals affirmed (Pet. App. 15-17). The court held that the Tax Court correctly viewed petitioner's attempt to introduce new issues into the proceeding on the eve of trial as a motion to amend and that the Tax Court did not abuse its discretion in denying the motion.

ARGUMENT

1. The court of appeals correctly upheld the Tax Court's refusal to allow petitioner to raise new issues on the eve of trial. Rule 34(b)(4) of the Rules of Practice and Procedure of the United States Tax Court requires that a petition set forth clear and concise assignments of error and statements of facts in support of the assigned errors. Since the taxpayer's petition did not assign any error or allege any facts with respect to education, home office, or business loss deductions, it would have been impermissible to allow petitioner to raise those issues at trial without amending the petition (see Pet. App. 16).

Tax Court Rule 41(a) permits a taxpayer to seek to amend his petition by leave of court and provides that leave shall be freely given when justice so requires. The Tax Court concluded, however, that it was not appropriate in the circumstances presented here to allow

petitioner to amend his petition to raise new issues on the eve of trial, and the court of appeals correctly upheld this discretionary decision. Petitioner had more than two and a half years to prepare his case for trial after he filed his Tax Court petition, yet he waited until the eve of trial to raise the new issues. Justice did not require the Tax Court to allow petitioner to amend his petition to introduce new issues at that late date. Moreover, under such circumstances, allowing petitioner to amend his petition would have unduly prejudiced the Commissioner by effectively denying him any reasonable opportunity to analyze the factual and legal grounds for the new claims.[3]

2. Petitioner's primary objection is not to the grounds upon which the courts below decided this case, *i.e.*, that it was a proper exercise of the Tax Court's discretion to deny leave to amend the petition on the eve of trial. Rather, petitioner maintains that there was no need to amend his petition because the original petition should have been liberally construed to cover claims to education, business loss, and home office deductions. Petitioner contends (Pet. 7-13), therefore, that the decision below should be read as holding that "the Tax Court may strictly and nar-

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[3] Petitioner erroneously claims (Pet. 11-12) a conflict with *Holmes* v. *Goldin*, 615 F.2d 83, 85 (2d Cir. 1980), which states that a pro se litigant should be allowed "fairly freely" to amend his complaint. That decision, however, does not suggest that a pro se litigant must *always* be allowed to amend his complaint, even if the request is made on the eve of trial and would prejudice the opposing party. Here, Tax Court Rule 41(a) permits any petitioner to amend his complaint "fairly freely." On the facts here, however, the courts below concluded that petitioner was not entitled to wait two and one half years and then amend his complaint on the eve of trial. Petitioner gives no reason for doubting the correctness of that conclusion, especially in light of the fact that the defect in the petition was not a technical one that could be ascribed to a pro se petitioner's unfamiliarity with Tax Court procedure. See point 2, *infra*.

rowly construe pleadings of pro-se litigants" (Pet. 7) and that that holding conflicts with decisions of this Court and of other courts of appeals. This contention is plainly without merit.

First, the court of appeals made no pronouncement about the manner in which pro se pleadings should be construed. It did not even discuss whether the original Tax Court petition encompassed the issues that petitioner sought to raise at trial; the court of appeals' opinion focused entirely on whether the Tax Court abused its discretion in denying leave to amend the petition. Thus, there is no basis for claiming that the court of appeals' decision conflicts with other opinions setting forth standards for construing pro se pleadings.

Moreover, it is clear that, even under the most liberal reading of the petition, it cannot be construed to raise issues relating to education, home office, or business loss deductions. The petition's description of the objections to the Commissioner's determination was fairly detailed, but all of the objections related to the calculation of the taxable income from his rental property (see Pet. 3). Thus, the defect in the petition that limited the issues petitioner could raise at trial was not a failure to "strictly comply with the technical rules of Tax Court procedure" (Pet. 7) for which a pro se litigant might be excused; the defect was that petitioner sought to raise at trial unrelated issues that he had not raised when he filed his petition or at any time thereafter until the eve of trial.[4] The fact that the defect in the petition was not technical in nature, but rather reflected what petitioner actually intended to raise in the

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[4] To the extent of the rental income issues actually raised therein, the petition was not defective at all, and petitioner obtained some relief on those issues as a result of having filed the petition (see Doc. 13).

petition, is confirmed by petitioner's subsequent statements. When the case was first called for trial on February 4, 1985, petitioner stated to the court that his objections were to the treatment of his rental income and made no mention of the other claims that he subsequently sought to raise on the eve of trial.[5] In sum, the decisions below are fully consistent with the principle that the pleadings of a pro se litigant should be liberally construed.[6]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Assistant Attorney General
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MAY 1988

[5] Petitioner stated (I-Tr. 6-7):

> At issue is the fact that they credited me with income from my rental property, but they failed to take into account any of the utilities or any of the bills that were part of operating that property. And the bottom line is that the property—they're crediting me with income, and there was no income.

[6] Petitioner relies (Pet. 9-10) on *Christensen* v. *Commissioner*, 786 F.2d 1382 (9th Cir. 1986), for the proposition that papers filed by a pro se litigant should be liberally construed and treated as a motion to amend where appropriate. That principle, however, was followed here, not rejected. The Tax Court treated petitioner's untimely attempt to raise issues not included in the petition as a motion to amend, even though no such motion technically was filed.

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